

1 distribution figures. And, remember, we're in
2 public session here. So I'm going to avoid
3 referencing penetration percentages. And I
4 would ask you to do the same. Okay?

5 A Okay.

6 Q If we have to, if we can't do
7 that, then we'll see if we need to go private
8 session, but I would like to try and proceed
9 that way.

10 Let's focus on 2009. Now, 2009 we
11 saw earlier was May 12th, wasn't it, was the
12 day of your meeting with Mr. Bond and Comcast
13 when you made your proposal, correct?

14 A Yes.

15 Q Okay. So we have carriage
16 information here that has been provided in
17 this case and put in this table for September
18 2009, which is a few months later. Do you see
19 that?

20 A Yes.

21 Q All right. And Cablevision, for
22 example, has a percentage in September, but,

1 actually, it was at zero in May. Can we agree
2 on that, not carrying you back in May?

3 A Yes.

4 Q And AT&T was not carrying you
5 either back in May when you made your offer,
6 correct?

7 A Yes, that is correct.

8 Q And then I've got the percentages
9 listed for the other MVPDs listed there. Are
10 there any of them that when you look at it
11 look off or that you wish to disagree with
12 based on looking at them?

13 A They look like they're in the
14 range.

15 Q And in the right column, you will
16 see I have a column heading "Equity for
17 Carriage." Would you agree with me that
18 Time-Warner, Cox, Comcast, Charter, Verizon,
19 those entities listed, none of those were
20 entities that had equity for carriage deals
21 with you as of May 2009, correct?

22 A I would.

1 Q Dish and DirectTV we've already
2 spoken about. Cablevision also did not have
3 an equity for carriage deal with you in 2009,
4 agreed?

5 A Agree.

6 Q Did you discuss with Mr. Bond in
7 May of 2009 any of these penetration levels
8 that any of the other MVPDs had?

9 A I don't recall specifically, but I
10 would presume that that was a question that
11 either Mr. Bond or one of his team would have
12 asked. They are certainly possible.

13 JUDGE SIPPEL: Can I ask a
14 question? There is no marking on here about
15 this being confidential or highly confidential
16 or in any way confidential.

17 MR. CARROLL: There should be.

18 JUDGE SIPPEL: Does that make a
19 difference.

20 MR. CARROLL: There should be,
21 though.

22 JUDGE SIPPEL: Let me ask the

1 question this way, then. This is a Comcast
2 document. I take it it was an exhibit
3 prepared. But the numbers are tensed.

4 MR. PHILLIPS: Your Honor, this is
5 a Comcast-created document.

6 JUDGE SIPPEL: Yes. This is what
7 I mean.

8 MR. CARROLL: Using Tennis
9 information.

10 JUDGE SIPPEL: Yes. That's what I
11 thought it to be. Okay. Maybe you could ask
12 the witness. Does your client have any
13 objection to this being released to the
14 public?

15 MR. SCHMIDT: Yes.

16 JUDGE SIPPEL: Okay. Thank you.

17 JUDGE SIPPEL: I will mark it,
18 then, confidential.

19 MR. CARROLL: Yes. I've done
20 that. Forgive us for that omission. Thank
21 you for clarifying that, Your Honor.

22 JUDGE SIPPEL: You're forgiven.

1 Thank you.

2 BY MR. CARROLL:

3 Q Without using numbers, do you
4 agree with me that at the time of the May 2009
5 proposal you made to Mr. Bond, Time-Warner,
6 Charter, Cablevision, and AT&T were all
7 carrying Tennis Channel at lower levels than
8 Comcast?

9 A No.

10 Q Time-Warner, Charter, Cablevision,
11 and AT&T. They were all either at zero or at
12 lower levels of distribution?

13 A AT&T wasn't carrying this at the
14 time.

15 Q That's even worse than carrying
16 you at a low level, yes?

17 A Not necessarily, but they weren't
18 carrying us.

19 Q Is there any world in which you
20 prefer zero carriage, as opposed to some small
21 amount?

22 A You asked me if they were carrying

1 us. They weren't carrying us.

2 Q Okay. So those --

3 JUDGE SIPPEL: We can assume they
4 didn't get any equity for that, right?

5 (Laughter.)

6 MR. CARROLL: You are ahead of me
7 now.

8 BY MR. CARROLL:

9 Q Now let me move down to 2010 for a
10 second because you have made reference to
11 Verizon and to AT&T. Subsequently in 2010,
12 AT&T began carrying you, correct?

13 A Correct.

14 Q Okay. Was there a small equity
15 piece in the AT&T deal as well?

16 A No.

17 Q Do you remember writing some notes
18 and having some dialogue with the AT&T people
19 in which you complained that they had managed
20 to get an equity concession out of you?

21 A I don't recall that.

22 MR. CARROLL: May I approach, Your

1 Honor?

2 JUDGE SIPPEL: You may.

3 MR. CARROLL: This is exhibit 708,
4 sir.

5 (Whereupon, the aforementioned
6 document was marked for
7 identification as Exhibit Number
8 708.)

9 JUDGE SIPPEL: Same question on
10 this. Is this supposed to be confidential?

11 MR. PHILLIPS: Your Honor, this
12 has highly confidential on the bottom.

13 JUDGE SIPPEL: I'm sorry?

14 MR. PHILLIPS: This has highly
15 confidential on the bottom.

16 JUDGE SIPPEL: It does? I stand
17 corrected. I'm right-handed.

18 MR. CARROLL: Me, too.

19 BY MR. CARROLL:

20 Q So this exhibit 708, Bates
21 number's TTC0009129. This is an e-mail
22 exchange between yourself and someone at AT&T

1 when you were negotiating the AT&T deal,
2 correct?

3 A Yes.

4 Q And you had some hard language
5 that you exchanged during these negotiations.
6 Do you remember that?

7 A Yes. If I recall, I was sitting
8 on a plane which was closing, and it had been
9 a long couple of days.

10 Q And so you're writing to him.
11 You're on the tarmac. No one is jerking
12 anyone around. And you refer there --

13 MR. CARROLL: I'm in the first
14 paragraph, Your Honor, under the middle e-mail
15 from Mr. Solomon. It starts on, I think that
16 should be, "On the tarmac. We were on the
17 phone together." And I want to go down. It
18 says, "No one is jerking anyone around. There
19 appear to be real issues here."

20 BY MR. CARROLL:

21 Q Despite me facing concessions on
22 things I don't think we should have, beginning

1 with equity," do you see that, sir?

2 A Yes, I do.

3 Q Now, you wrote that. What is the
4 concession on equity you are referring to?

5 A I have no idea.

6 Q You agree with me that you are
7 telling the negotiator at AT&T that you have
8 had to make a concession on equity there?

9 A I don't remember the context. I
10 certainly don't remember equity being any part
11 of our deal or even part of our discussions,
12 currently any part of our closed deal. I do
13 remember literally racing to type this as the
14 door was closing, thinking we should have --
15 because I know we were past deadlines. I
16 really don't know what that is referring to.

17 Q So you can't explain what you were
18 referring to there when you said, "Despite me
19 forcing concessions on things I don't think we
20 should have, beginning with equity"?

21 A Correct.

22 Q But you did write that?

1 A Apparently I did.

2 Q Okay. You can put that to the
3 side. Now, in 2010, I want to look at
4 Verizon. And I don't want to use the numbers
5 precisely because they are confidential, but
6 let me see if I can do it this way. I think
7 in your direct testimony, I wrote your words
8 down. I think you said Verizon had moved you
9 down slightly. Were those your words?

10 A I believe they were.

11 Q Is this the slight move you were
12 referring to? If you compare the Verizon line
13 in 2009 in the middle, there is a percentage
14 there. Do you see it? Don't say what it is,
15 but do you see the percentage?

16 A Uh-huh.

17 Q Do you see the percentage in 2010
18 is lower?

19 A I do.

20 Q It's about lower, isn't
21 it?

22 A It appears -- if we're looking at

1 the same document, it appears to be about
2 lower.

3 JUDGE SIPPEL: Well, let's be sure
4 we're looking at the same document.

5 MR. CARROLL: We are.

6 JUDGE SIPPEL: Am I misreading it?

7 BY MR. CARROLL:

8 Q If you compare the move to the
9 percentage that you had initially and you ask
10 how much did they move down compared to what
11 distribution you had, you lost about
12 of your distribution with them?

13 A Well, no. That is not correct
14 because Verizon was actually growing at the
15 time. So you are using a penetration number,
16 but the truth is in terms of actual real
17 subscribers, we didn't lose nearly that much.
18 In fact, they were growing. And Verizon's
19 business was growing. So our overall
20 subscriber base I don't believe dropped to the
21 numbers that you were saying. Certainly that
22 is not reflected here.

1 Q Let me start with penetration, and
2 I will follow up on the other part of your
3 answer. Looking at penetration percentages,
4 the amount of penetration you had previously
5 shrank by about .

6 A About .

7 Q
8
9 . The amount that
10 you lost was of your penetration.

11 A Okay. The lower number is
12 lower than the higher number.

13 Q Okay.

14 A We did not lose if that
15 is the way you want to characterize it.

16 Q And you still describe that as
17 down slightly?

18 A Yes.

19 Q Do you remember how many
20 subscribers you lost from 2010 as a result of
21 their -- first of all, the word for what
22 happened was they negatively repositioned you,

1 agreed?

2 A Yes. It's the term in the
3 business.

4 Q That's not a good thing from your
5 perspective?

6 A It's not as good as being
7 positively repositioned.

8 Q It's not a good thing from your
9 position?

10 A Well, again, it depends on what
11 your total number of subscribers are. There
12 are a lot of factors that go into -- if you're
13 asking me for my opinion, then my opinion is
14 that there's a lot of things that go into
15 determining what's a good or a bad thing.

16 Q Sir, you were so upset with this
17 that you consulted a lawyer and were thinking
18 of suing them for a contract breach. Do you
19 remember that?

20 A Well, I don't know about being "so
21 upset." I do know that whenever something
22 happens, we make sure that it's within the

1 confines of an agreement which exists.

2 I'm not sure that I would
3 characterize it as being so upset. And we
4 talk to our lawyers and attorneys all the time
5 to make sure that we're within the confines of
6 our agreement.

7 Q Did you think of suing them
8 because you were upset about what they had
9 done to you, "Yes" or "No"?

10 A I think that our distribution
11 folks looked at that and wanted to make sure
12 that they considered every means. And, if I
13 remember correctly, there were other factors
14 that were involved with that decision.

15 Q If you would turn to exhibit 121?
16 I previously put it up there for you.

17 MR. CARROLL: Your Honor, I think
18 that was --

19 JUDGE SIPPEL: What was the
20 number?

21 MR. CARROLL: One twenty-one.

22 JUDGE SIPPEL: I have it, two-page

1 document.

2 MR. CARROLL: Yes, two-page
3 document.

4 BY MR. CARROLL:

5 Q Mr. Solomon, it has your
6 handwriting on it. Tell me when you are
7 there, sir.

8 A Okay. I found it. I assume that
9 --

10 Q Okay. Along with your handwriting
11 that's dated October 5, 2010, do you see it?

12 A Yes.

13 Q Okay. Do you see this as an
14 update distribution you were getting in the
15 year 2010? Okay? So that's the year after
16 your proposal to Comcast, to Mr. Bond, in
17 2009. This is 2010, right? Do you see that?

18 A Yes.

19 Q And you see that you are
20 explaining here why it is that you are going
21 to fall short on your subscriber numbers for
22 the year. Do you see that?

1 A I am not describing anything. I
2 didn't write this note.

3 Q You received this report from your
4 team. And we know you received it because you
5 wrote notes on it when you got it, correct?

6 A I didn't deny that I had received
7 it. I just want to be clear because you said
8 "You wrote,"

9 Q Right.

10 A And I don't believe that I wrote
11 this.

12 Q Now, do you see in explaining the
13 shortfall in your subscribers for 2010, you
14 started to say, "Verizon accounts for" and you
15 put a number on how many subscribers Verizon's
16 negative repositioning is losing you? Do you
17 see that?

18 A Yes.

19 Q Okay. That is the number of
20 subscribers that you were falling short
21 because of what Verizon did, correct?

22 A Falling short versus our

1 projections.

2 Q Yes. And you're not blaming
3 Comcast for what Verizon decided to do, I take
4 it?

5 A Not directly.

6 Q

7

8

9 A Are we in open session? We're
10 talking about contracts.

11 JUDGE SIPPEL: We are in open
12 session.

13 MR. CARROLL: Do you want that
14 fact not --

15 MR. PHILLIPS: Yes.

16 MR. CARROLL: All right. Okay.
17 Let's change gears. You can put that to the
18 side, sir. Now we're going to jump around
19 here. I'm going to see if I can clean out
20 some other issues quickly at the end.

21 BY MR. CARROLL:

22 Q I think you talked when your

1 attorney was questioning you about all the
2 tournaments that you have that your channel
3 covers around the world and grand slams that
4 you have and other tournaments. Do you
5 remember that subject area?

6 A Yes.

7 Q Okay. Isn't it correct, sir, that
8 for the tournaments that are not grand slams
9 -- there are four grand slam tournaments,
10 correct?

11 A Yes, four majors commonly referred
12 to as grand slams.

13 Q Okay. All of the others are not
14 grand slams, right?

15 A Yes.

16 Q That's an easy one. Is it
17 correct, sir, that you pay little or no rights
18 fees for all of those other tournaments?

19 A Yes.

20 Q So, really, the only ones that
21 cost you anything are the grand slams?

22 A No.

1 Q Well, little or no rights fees for
2 all of the non-grand slam tournaments. Are we
3 agreed on that?

4 A On a relative basis to the slams,
5 others cost less. We agree on that.

6 Q Lots of them you get for free?

7 A Not really, no.

8 Q I'm talking about the fees you
9 have to pay to get the rights to the
10 tournament. Lots of the tournaments that you
11 cover you don't have to pay the tournament in
12 order to get the right to telecast the
13 tournament, correct?

14 A Strict rights fees, that is true.

15 Q Okay. Good. The grand slam
16 rights that you pay for are actually fairly
17 inexpensive as well. Is that correct?

18 A I don't think so.

19 Q Would you describe them as very
20 affordable as compared to other major sports?
21 Maybe other major sports are much more
22 expensive than what you are able to get your

1 coverage of the grand slams for?

2 A They would certainly be more
3 affordable than the equivalent of the best of
4 other sports.

5 Q Would you describe your grand slam
6 rights as extremely affordable compared to all
7 other major sports rights, "Yes" or "No"?

8 A It depends who I was talking to.

9 Q How about if you were talking to
10 your own people in your own document? Is that
11 how you would say it?

12 A Probably.

13 Q Do you want to see the document or
14 do you acknowledge that internally at Tennis
15 Channel you have spoken amongst yourselves and
16 said, "The grand slam rights are extremely
17 affordable compared to all other major sports
18 rights"?

19 A Well, I just said probably, but
20 I'm happy to look at it if you want me to look
21 at it.

22 Q And the rights that you get for

1 the grand slams -- and I won't use numbers for
2 the tournaments themselves, but let me try and
3 do it this way. For Wimbledon, do you get any
4 --

5 A Because we've had a few slips
6 before, I'm not sure if I'm allowed to ask
7 this. But I just want to make sure that
8 numbers aren't again revealed in terms of
9 averaging or otherwise in terms of rights.

10 Q No.

11 A I just want to be sure.

12 Q No.

13 A Thank you. Well, we have had a
14 few slips in the past.

15 Q With Wimbledon, the tournament is
16 over there in England, right? So there is
17 obviously a time difference. And the finals
18 are always on a weekend. Is that how it
19 works?

20 A Yes unless it rains.

21 Q Do you get any of the weekend live
22 coverage for those?

1 A We don't get any live coverage
2 with Wimbledon.

3 Q No live coverage at all?

4 A No.

5 Q So what you have are I take it
6 rights to sort of reruns? Tournaments after
7 they've played you can show them?

8 A Some of them are matches that are
9 technically reruns in that they may have been
10 seen. It's a different production. So it's
11 not reruns of other productions in the United
12 States. Others are matches that haven't been
13 seen.

14 Q And some of the programming is
15 just you have talk shows where people are
16 talking about what is going on at Wimbledon,
17 but you are not actually watching any live
18 matches. Is that right?

19 A Not really. We have -- there are
20 bumpers and interstitials and interviews, but
21 no, we don't have talk shows. We have -- in
22 what you would describe as a talk show, which

1 would infer that there's not coverage.
 2 They're substantively composed of coverage in
 3 prime time that is time-shifted from live to
 4 prime just as the Olympics do, for example, on
 5 NBC because prime time is when the most
 6 viewers are there. And that's the rights that
 7 we have.

8 But it's not a talk show other
 9 than it's a format where we will have
 10 announcers around the live coverage. A talk
 11 show wouldn't be a live coverage-based show --

12 Q Okay.

13 A -- or a coverage-based show. I'm
 14 sorry.

15 Q Yes because none of it is live.

16 A No. It's generally same day from
 17 earlier. And, again, some of it is original
 18 but not live.

19 Q Who has the live coverage for the
 20 matches?

21 A NBC and ESPN.

22 Q And let's do Australia. Let me

1 ask this question. And if you can't answer it
2 in public, we can clean up the answer maybe
3 later and not slow things down. Do you pay
4 anything for your rights to the Australian
5 open? Are there any rights fees you pay?

6 A Well, that I can't answer. We
7 certainly pay a significant amount to cover
8 the Australian open and to produce it and to
9 market.

10 Q Well, no. I was referring to
11 rights fees.

12 A I can't discuss that.

13 MR. CARROLL: And, just so it's
14 clear, Your Honor, --

15 BY MR. CARROLL:

16 Q Rights fees you and I understand,
17 sir, are what you would have to pay the people
18 who own the tournament for the right to film
19 it, right? That's what a right fee is?

20 A Yes. You would pay the rights
21 holder.

22 Q As distinguished from if you get

1 those rights, even if you get them for
2 nothing, presumably you have to have a
3 cameraman, you have to pay the cameraman. You
4 have to pay for your equipment to get over
5 there to actually produce it. Those would be
6 production fees, right?

7 A That's not necessarily an accurate
8 way of describing production costs, but yes,
9 they are separate. They can be -- you could
10 separate them out from rights fees.

11 Q Okay. Production fees and rights
12 fees are two different things?

13 A They really aren't because
14 whenever you're sitting negotiating with a
15 rights holder, production fees are so
16 significant for an event like the grand slam,
17 which is the equivalent of the Olympics
18 because it occurs over two weeks with so many
19 producers and cameramen and such high
20 infrastructure that you're actually paying for
21 an allocation of the overall production of
22 that event. So it's not we're putting a

1 couple of cameramen on a plane to fly over
2 there and shoot it.

3 Q Whatever the production fees may
4 or may not be with respect to rights fees --
5 and we'll reserve this question. I'm happy to
6 get an answer later at a more convenient time.
7 The question I had asked was whether there
8 were any rights fees whatsoever for the
9 Australian open. That's a confidential piece
10 of information.

11 MR. CARROLL: So we can I guess
12 reserve that, although is there anybody here
13 who is not -- if you can just step out for one
14 second, sir? And maybe we can just do this
15 very quickly.

16 JUDGE SIPPEL: Thank you, sir.
17 Thank you.

18 (Whereupon, the foregoing matter
19 went off the record at 4:54 p.m., to reconvene
20 in closed session.)
21
22